

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Request for Review of the)	
Decision of the)	
Universal Service Administrator by)	
)	
Northeast Educational Services Cooperative)	File No. SLD-144429
Hayti, South Dakota)	
)	
Federal-State Joint Board on)	CC Docket No. 96-45
Universal Service)	
)	
Changes to the Board of Directors of the)	CC Docket No. 97-21
National Exchange Carrier Association, Inc.)	
)	

ORDER

Adopted: February 20, 2002**Released: February 21, 2002**

By the Accounting Policy Division, Common Carrier Bureau:

1. The Accounting Policy Division has under consideration a Request for Review filed by Northeast Educational Services Cooperative (NESC), Hayti South Dakota.¹ NESC seeks review of a funding commitment decision issued by the Schools and Libraries Division (SLD) of the Universal Service Company (Administrator) in response to NESC's request for discounts under the schools and libraries universal service support mechanism.² For the reasons set forth below, we deny NESC's Request for Review.

2. Under the schools and libraries universal service support mechanism, eligible schools, libraries, and consortia that include eligible schools and libraries, may apply for discounts for eligible telecommunications services, Internet access, and internal connections.³ In order to

¹ Letter from Lawrence L. Furney, Northeast Educational Services Cooperative, to Federal Communications Commission, filed July 17, 2000 (Request for Review).

² *Id.* Section 54.719(c) of the Commission's rules provides that any person aggrieved by an action taken by a division of the Administrator may seek review from the Commission. 47 C.F.R. § 54.719(c).

³ 47 C.F.R. §§ 54.502, 54.503.

receive discounts on eligible services, the Commission's rules require that the applicant submit to SLD a completed FCC Form 470, in which the applicant sets forth its technological needs and the services for which it seeks discounts.⁴ Once the applicant has complied with the Commission's competitive bidding requirements and entered into an agreement for eligible services, it must file an FCC Form 471 application to notify the Administrator of the services that have been ordered, the carrier with whom the applicant has entered an agreement, and an estimate of funds needed to cover the discounts to be given for eligible services.⁵ Approval of an application is contingent upon the filing of a completed FCC Form 471, and funding commitment decisions are based on information provided by the school or library in this form.

3. The instant appeal arises from SLD's denial of NESC's Funding Request Number (FRN) 283448 on the grounds that more than 30 percent of the funding request was for ineligible cellular telephone service.⁶ NESC's subsequent appeal to SLD was also denied for the same reason.⁷ SLD explained that more than 30 percent of the NESC's funding request was for cellular service to be used in connection with the transportation of students.⁸ SLD further explained that, in accordance with program rules, cellular service must be used to provide an educational benefit to the students in order to be eligible for a discount.⁹

4. In response, NESC filed the instant Request for Review with the Commission.¹⁰ In its Request for Review, NESC indicates that it is a consortium of 25 school districts and the cellular phones for which discounts were sought are located in cars used to transport students with severe disabilities between school districts.¹¹ NESC stated that the students are transported daily in groups to central locations in order to facilitate their special education.¹² NESC asserts that the cell phones are necessary in the event of emergency weather or medical circumstances.¹³

⁴ 47 C.F.R. §§ 54.504(b)(1), (b)(3).

⁵ 47 C.F.R. § 54.504(c).

⁶ Letter from the Schools and Libraries Division, Universal Service Administrative Company, to Lawrence L. Furney, Northeast Educational Service Cooperative, dated October 26, 1999 (Funding Commitment Decision Letter).

⁷ Letter from Lawrence L. Furney, Northeast Educational Services Cooperative, to Schools and Libraries Division, Universal Service Administrative Company, filed November 8, 1999 (SLD Appeal). *See also* Letter from Schools and Libraries Division, Universal Service Administrative, to Lawrence L. Furney, Northeast Educational Service Cooperative, dated May 2, 2000 (Administrator's Decision on Appeal).

⁸ Administrator's Decision on Appeal.

⁹ *Id.*

¹⁰ Request for Review.

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

5. We have reviewed the record before us and conclude that SLD properly denied NESC's funding request. During the application review process, SLD contacted NESC to request additional information about the cellular phone usage for which NESC sought discounts.¹⁴ NESC indicated that six of the thirteen cellular phones were used by staff members who provided transportation between school districts for children with disabilities.¹⁵ NESC indicated that two phones were used by the director, one by an assistant director, four by occupational therapists, two by physical therapists, and four by teacher assistants who transported the disabled children.¹⁶

6. Under the schools and libraries universal service support mechanism, the primary purpose for which support is sought must be the delivery of services to the classrooms or other places of instruction at schools and libraries meeting the statutory definition of an eligible institution.¹⁷ Applicants may not seek support for ineligible services, entities and uses.¹⁸ In order to ensure that only eligible entities receive discounts, applicants must allocate the cost of shared services and facilities among eligible and ineligible entities.¹⁹ Although SLD reduces a funding request to exclude the cost of ineligible services in circumstances where the ineligible services represent less than thirty percent of the total funding request, SLD will deny a funding request in its entirety if ineligible services constitute thirty percent or more of the total.²⁰ An applicant can

¹⁴ Letter from Lawrence L. Furney, Northeast Educational Services Cooperative, to Schools and Libraries Division, Universal Service Administrative Company, dated March 2, 2000. *See also* SLD Appeal.

¹⁵ *Id.*

¹⁶ Schools and Libraries FCC Form 471 PIA Review Log, dated April 5, 1999 (PIA Review Log). *See also* SLD Appeal.

¹⁷ Sections 245(b)(6) and 254(h)(2)(A) of the Communications Act specifically refer to the provision of telecommunications and other services directly to classrooms. 47 U.S.C. §§ 254(b)(6), 254(h)(2)(A). *See also* SLD web site, <<http://www.sl.universalservice.org>>.

¹⁸ Instructions to Schools and Libraries Universal Service, Services Ordered and Certification Form, OMB 3060-0806 (FCC Form 471 Instructions) (September 1999), at 18.

¹⁹ *See id.* To the extent that an applicant seeks discounts for eligible services bundled with ineligible services, applicants must also apportion the costs of eligible and ineligible services. *Universal Service Order* at 9022, para. 461-462.

²⁰ *See Request for Review of the Decision of the Universal Service Administrative Company by Ubyly Community Schools, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, CC Docket Nos. 96-45 and 97-21, Order, 15 FCC Rcd 23267 (Com. Car. Bur. rel. 2000); *Request for Review of the Decision of the Universal Service Administrator by Anderson School, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. SLD-133664, CC Docket Nos. 96-45 and 97-21, Order, 15 FCC Rcd 25610, para. 8 (Com. Car. Bur. rel. 2000). The "30 percent policy" is not a Commission rule, but rather is an SLD operating procedure established pursuant to FCC policy. *See Changes to the Board of Directors of the National Exchange Carrier Association, Inc., Federal-State Joint Board on Universal Service*, CC Docket Nos. 97-21 and 96-45, Third Report and Order in CC Docket No. 97-21 and Fourth Order on Reconsideration in CC Docket No. 97-21 and Eighth Order on Reconsideration in CC Docket No. 96-45, 13 FCC Rcd 25058 (1998). This operating procedure, used during SLD's application review process, enables SLD to efficiently process requests for funding for services that are eligible for discounts but that also include some ineligible components. If less than 30 percent of the request is for funding of ineligible services, SLD normally will consider the application and issue a funding commitment for the eligible services. If 30 percent or more of the request is for funding of ineligible services, SLD will deny the

avoid denial by subtracting out, at the time of its initial application, the cost of ineligible services.

7. NESC's funding was denied because the cost of ineligible services constituted more than thirty percent of the total funding request. Cellular telephone service is eligible for discount funding under program rules if it is 1) provided for use at a place of instruction, and 2) used for an educational purpose.²¹ Cellular service for personnel not involved with instruction is ineligible unless those individuals also provide instruction.²² In addition, SLD's Eligible Services List provides that use of the phones must "support instruction or support curriculum or instruction management."²³ NESC's funding request is ineligible under both elements of this test. NESC states that six of thirteen requested cellular phones were used by occupational or physical therapists in the transportation of children between school districts.²⁴ These phones are not used at a place of instruction nor are they used for educational purposes.

8. NESC also asserts that the phones are necessary in the event of an emergency.²⁵ However, cellular telephone service is not eligible if used only for security purposes, including security purposes on school buses.²⁶ Similarly, under program rules, cellular telephone service is not eligible for discounts to facilitate the transportation of students to and from schools. Therefore, we affirm the Administrator's finding that more than thirty percent of NESC's funding request is for ineligible uses and we deny NESC's Request for Review.

funding request in its entirety. The 30 percent policy allows SLD to efficiently process requests for funding that contain only a small amount of ineligible services without expending significant fund resources working with applicants that are requesting funding of ineligible services.

²¹ See Schools and Libraries Eligibility List, located on the SLD web site, <<http://www.sl.universalservice.org>>.

²² *Id.*

²³ See Schools and Libraries Eligibility List.

²⁴ See PIA Review Log. It is unclear from the record whether cellular service for the director, assistant director, and teachers aides would be eligible for funding under the facts presented. The Schools and Libraries Eligibility List provides that cellular phone service for teachers, teacher aides and curriculum coordinators is eligible for discounts, while cellular service for facility directors is not eligible unless the directors also provide instruction. In particular, it is unclear whether the director and assistant director of NESC would qualify as "curriculum coordinators" or "facility directors", since the record fails to establish whether they also provide instruction. In this instance, however, we need not reach this determination. We are able to affirm SLD's determination that more than thirty percent of NESC's funding request is for ineligible uses because six of the thirteen requested cellular phones are used by occupational or physical therapists for whom cellular service is clearly ineligible for discount.

²⁵ Request for Review.

²⁶ See Schools and Libraries Eligibility List.

9. ACCORDINGLY, IT IS ORDERED, pursuant to authority delegated under sections 0.91, 0.291, and 54.722(a) of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, and 54.722(a), that the Request for Review filed July 17, 2000, by Northeast Educational Services Cooperative, Hayti, South Dakota, IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Mark G. Seifert
Deputy Chief, Accounting Policy Division
Common Carrier Bureau